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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. 175

MARCUS HAUGE, *Appellant,*

vs.

THE CITY OF CHICAGO.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

BARNET HODES,
MARTIN H. FOSS,
Counsel for Appellee.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. 175

MARCUS HAUGE, *Appellant*,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION, *Appellee*.

APPEAL FROM THE SUPREME COURT OF ILLINOIS; THERE HEARD ON APPEAL FROM THE MUNICIPAL COURT OF CHICAGO.

Hon. Frank M. Padden, Trial Judge.

STATEMENT BY APPELLEE OF MATTERS AND GROUNDS MAKING AGAINST THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

MAY IT PLEASE THE COURT:

Appellee, City of Chicago, a municipal corporation, respectfully presents to the court the following matters and grounds making against the jurisdiction of the Supreme

Court of the United States on the appeal of appellant from the Supreme Court of Illinois to the Supreme Court of the United States:

Statement of the Case.

This case is one of three cases heard together by the Supreme Court of Illinois on appeal from the Municipal Court of Chicago. While the cases were not consolidated, only one opinion was written to cover the three, and the several judgments of the Municipal Court were affirmed. *City of Chicago* v. *Waters*, *City of Chicago* v. *Hauge*, *City of Chicago* v. *Gorman*, 363 Ill. 125, 1 N. E. (2d) 396.

It involves the validity of an ordinance which has been a part of the municipal code since 1923, one designed to protect the public against false and dishonest weights in deliveries of coal and other commodities sold in vehicle or load lots.

The section in controversy is section 2947 of the Revised Chicago Code of 1931, which provides that every load of any commodity sold in load lots by weight, delivered by wagon, truck or other vehicle within the city, shall be weighed by a public weighmaster and a certificate of weight for each such load issued by such public weighmaster shall be delivered by the person in charge of the vehicle to the purchaser or consignee before any of the commodity is removed from the vehicle. (Abst. 38.)

The ordinance was enacted pursuant to the express delegation of authority conferred upon the city by the legislature of Illinois. It has twice been reviewed by the Supreme Court of Illinois and its validity upheld, once in the instant case and once in the year 1924, in the case of *City of Chicago* v. *Wisconsin Lime and Cement Co.*, 312 Ill. 520, 144 N. E. 3. In the last mentioned case it was not only pronounced reasonable and valid but "most commendable and essential to secure to the purchaser the weight of the

commodity purchased and paid for." The *Wisconsin Lime and Cement Co.* case was taken to the Supreme Court of the United States by writ of error and extensive briefs filed by the parties. By a *per curiam* opinion the case was dismissed for want of jurisdiction. (*Wisconsin Lime and Cement Co., Inc., Plaintiff in Error,* v. *City of Chicago,* (No. 141) 270 U. S. 626.)

Appellant now seeks a further review by the Supreme Court of the United States and claims that he is entitled to invoke the jurisdiction of this Court upon the ground that the ordinance in question is violative of the first section of the Fourteenth Amendment to the Constitution of the United States.

That the Supreme Court of the United States may properly decline to take jurisdiction of the appeal will be apparent from an inspection of the record and consideration of the following grounds making against the jurisdiction of that Court:

1.

A Federal question, namely, the question whether the ordinance violates section one of the Fourteenth Amendment, was not involved in the decision of the Trial Court, was not presented for decision to the Supreme Court of Illinois, and the decision of that court of such Federal question was not necessary to the determination of the cause.

The contention of appellant Hauge that section 2947 was violative of the Fourteenth Amendment was not involved in the decision of the trial court. It was not until the conclusion of the trial and after the trial judge had found in favor of the plaintiff municipality and announced that the only question left was the amount of the fine, that one of defendant Hauge's counsel stated that if the ordinance section were construed to prevent the acts involved in the case,

it would violate the Illinois Constitution and section 1 of the Fourteenth Amendment. (Abst. 26, 27.)

When the case was taken to the Supreme Court of Illinois no formal assignments of error were filed by appellant. In the joint brief and argument filed on behalf of appellant Hauge and the appellants in the other two cases it was stated, among the "errors relied on," that section 2947 was unconstitutional because it "deprives the defendant of the equal protection of the laws and of liberty and property without due process of law in violation of the first section of the Fourteenth Amendment of the Constitution of the United States." This quoted statement contained the only mention made of the Fourteenth Amendment. The point was not contained among the points and authorities or in the argument portion of appellant's brief. Therefore the point, if properly raised at all, was abandoned by appellant. Inasmuch as the point was not urged among the points relied upon by appellant but merely mentioned in the statement portion of appellant's brief among the "errors relied on" it was not treated by appellee as a real issue and not discussed in appellee's brief. Furthermore the point is nowhere mentioned or relied upon in the joint reply brief and argument filed by appellant Hauge and the appellants in the other two cases before the Supreme Court of Illinois. In fact appellants expressly state on page 1 of their reply brief "that the sole ground of defense in the court below and the principal error relied upon by the appellants, is that the ordinance is invalid as being unreasonable."

Assignments of errors not briefed nor argued are waived.

Kansas City Life Ins. Co. v. *Gehant*, 362 Ill. 58, 198 N. E. 703;

The People v. *Cobb*, 343 Ill. 78, 174 N. E. 885.

Such rule of practice will be recognized by the Supreme Court of the United States.

Hulbert v. *City of Chicago,* 202 U. S. 275, 281.

Neither was the point discussed in the oral argument. It is not sufficient to raise a Federal question for the first time in a petition for rehearing.

Harding v. *Illinois,* 196 U. S. 78, 84;

McMillen v. *Ferrum Mining Co.,* 197 U. S. 343, 347.

The point of alleged violation of the Fourteenth Amendment not being properly raised in the trial court and not being presented to the Supreme Court of Illinois, and therefore not being necessary to the determination of the cause in the Supreme Court of Illinois, a jurisdictional ground is not furnished the Supreme Court of the United States upon which it can take jurisdiction of this appeal. The gratuitous pronouncement contained in the opinion of the Supreme Court of Illinois, which is to the effect that the ordinance is not susceptible to the charges lodged against it of being a violation of section 1 of the Fourteenth Amendment, merely evidences, as we view it, a thoroughness on the part of the writer of the opinion to cover all probable phases of the case. Not being formally raised and presented it was not a question "necessary to the determination of the cause," therefore the court's dictum cannot provide the basis for an appeal to this Court.

In the case of *Lynch* v. *New York ex rel. Pierson,* 293 U. S. 52, a case in which the relator sought to invoke rights under the Fourteenth Amendment of the Constitution of the United States, this Court, speaking through the Chief Justice, said (p. 54):

> "It is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must appear affirmatively from the record, not only that a

federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question *was necessary to the determination of the cause,* and that it was actually decided *or that the judgment as rendered could not have been given without deciding it.*" (Italics ours.)

There is no doubt that the judgment rendered by the Supreme Court of Illinois in the case at bar could have been given without deciding that the ordinance did not violate the Fourteenth Amendment.

The decision of the Supreme Court of Illinois on non-Federal grounds adequately supports its judgment. That being the case, the Supreme Court of the United States will not take the case on appeal on the alleged Federal questions raised.

Doyle v. *Atwell,* 261 U. S. 590, 592;
McCoy v. *Shaw,* 277 U. S. 302, 303.

The assignments of error filed by appellant on his appeal to the Supreme Court of the United States, which purport to raise Federal questions, are all general, uncertain and indefinite. They merely state that the Supreme Court of Illinois erred in holding that the ordinance section does not deny to appellant the equal protection of the laws and does not deprive appellant of liberty and property without due process of law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States. None of them sets out with particularity the Federal questions attempted to be asserted. For this reason no question is presented to the Supreme Court of the United States for review.

Seaboard Air Line Ry. Co. v. *Watson,* 287 U. S. 86, 91.

The alleged Federal questions not having been timely and properly raised in the Supreme Court of Illinois, not

having been necessary to the determination of the cause by that court, and not having been adequately raised in the Supreme Court of the United States, the Supreme Court of the United States will not take this case on appeal.

Hulbert v. *City of Chicago,* 202 U. S. 275, 279;
Lynch v. *New York ex rel. Pierson,* 293 U. S. 52.

II.

The decision of the Supreme Court of Illinois was based primarily upon local law.

Examination of the record and the opinion of the Supreme Court of Illinois discloses that the decision of that court was based primarily upon local law. The only propositions argued and the only points necessary to a decision of the case were (1) whether a direct appeal was cognizable from the Municipal Court of Chicago to the Supreme Court of Illinois, (2) the validity of the ordinance, and (3) where the sale of the coal took place. (Appellant's brief, pp. 8, 9; Appellee's brief, pp. 13-15.)

The question of the validity of a municipal ordinance, being a question of local law, will not be reviewed by the Supreme Court of the United States.

Fischer v. *St. Louis,* 194 U. S. 361, 369;
Glenn v. *Field Packing Co.,* 290 U. S. 177, 178.

The other questions of local law are not open to re-examination in the Supreme Court of the United States.

Patterson v. *Colorado,* 205 U. S. 454, 459;
Campbell v. *City of Olney,* 262 U. S. 352, 354.

The decision of the state court being based primarily upon local law and a decision upon the Federal question, whether the ordinance violated the Fourteenth Amendment, not being necessary to the determination of the

cause, the case is not reviewable in the Supreme Court of the United States.

Lynch v. *New York*, 293 U. S. 52, 54.

III.

No substantial Federal question affording a basis for review by the Supreme Court of the United States is presented by this appeal.

The Supreme Court of the United States has repeatedly held that it will decline jurisdiction, although the constitutionality of a state law is drawn in question, when it appears that the constitutional question presented is not substantial in character.

Zucht v. *King*, 260 U. S. 174, is a case wherein the plaintiff in error sought to contend that an ordinance of the City of San Antonio, Texas, requiring compulsory vaccination, was violative of the due process and equal protection clauses of the Fourteenth Amendment, and that it denied plaintiff equal protection of the laws.

See also:

Corrigan v. *Buckley*, 271 U. S. 323, 330;

Quong Ham Wah Co. v. *Industrial Commission*, 255 U. S. 445;

Deming v. *Carlisle Packing Co.*, 226 U. S. 102.

The apparent afterthought attempt of appellant Hauge to inject a Federal question into the case should be unavailing when consideration is given to the character of the ordinance here involved, the need to protect the public against dishonest weights, and the power of the states and their municipalities, under their general police power, to guard their inhabitants and promote the public welfare uninterfered with by the Fourteenth Amendment.

The Fourteenth Amendment has ever been interpreted by the Supreme Court of the United States as promoting the public welfare and as not curtailing state agencies in coping with those who would cheat and defraud the unsuspecting public.

The ordinance involved in the case at bar is a salutary measure. It has been a part of appellee's municipal code for many years and received the support not only of the courts of Illinois but business concerns conducting their affairs on an ethical basis.

The Supreme Court of Illinois in the case of *City of Chicago* v. *Wisconsin Lime and Cement Co.*, 312 Ill. 520, 144 N. E. 3, said with reference to the ordinance, on page 522 of its opinion:

> "In buying ordinary articles the buyer generally may see the article weighed or have the means at hand to ascertain whether it is short weight, but when applied to load lots it was and is impossible for the purchaser to determine the weight of the load. The purpose of the ordinance was most commendable and essential to secure to the purchaser the weight of the commodity purchased and paid for, * * *."

And on page 523 it was said:

> "The power to regulate necessarily includes the power to make the regulation effective and to provide for methods of weighing which will secure truthful weights. The method provided for such regulation is the appointment of a weighmaster required to give a bond and pay a small fee, instead of the weighing being done by the seller, without the knowledge or supervision of anyone or any method of ascertaining whether the scales are correct or the weighing honest. The power to pass such an ordinance is sustained by many decisions."

In concluding its opinion the court said (p. 524):

"There is no legal objection to the ordinance."

In its later case, the case at bar, when again considering the same ordinance, the court said (*City of Chicago* v. *Waters*, 363 Ill. 125, 131, 1 N. E. (2d) 396):

> "The opportunity to defraud the consumer in the sale of coal in load lots is great and the consumer has no adequate way to protect himself against being cheated. The delivery of true weights of coal to the consumer is a matter clearly related to the public welfare and the city has the right to adopt reasonable ordinances therefor."

And on page 132 it said:

> "The object of the ordinance was not to benefit persons engaged in the coal business, or to give one competing dealer an advantage over another, or to enable some to comply with the ordinance readily and without inconvenience while others could not, but its purpose was to endeavor to give to the buyer of the coal, as nearly as practicable, honest weight. The defendants, non-residents of the city of Chicago, are asking for a practice of weighing, as applied to the business done by them in the city, which under the ordinance here would not apply to those truckers living in the city and delivering coal from the local yards or local dealers in the city to the consumer. To recognize the demand of the defendants would be to discriminate between the local truckmen and dealers in Chicago in favor of non-residents."

The ordinance under consideration requires that every load of coal or similar commodity sold in load lots by weight and delivered by wagon, truck or other vehicle within the city shall be weighed by a public weighmaster and that the certificate of weight for each such load issued

by a public weighmaster shall be delivered by the driver or person in charge of the vehicle to the purchaser or consignee at the time of the delivery and before the commodity is unloaded. (Abst. 38.)

The section relating to weight certificates prescribes the manner in which the net weight shall be determined. To insure correct net weights and prevent a weighmaster from guessing at the weight of the vehicle, it provides that in no case shall any public weighmaster state in his certificate the tare weight of any vehicle until he shall have weighed the vehicle in such manner as to secure the weight thereof. (Abst. 53.) This is a requirement manifestly necessary in order to obtain the correct net weight. It is a measure necessary to protect the purchaser.

This salutary ordinance appellant claims is violative of section 1 of the Fourteenth Amendment.

As pointed out by the Supreme Court of Illinois, without the protection afforded by the ordinance, the purchaser of coal in load lots would be at the mercy of unscrupulous dealers. It said in the case of *City of Chicago* v. *Wisconsin Lime and Cement Company,* 312 Ill. 520, 522, 144 N. E. 3:

> "In buying ordinary articles the buyer generally may see the article weighed or have the means at hand to ascertain whether it is short weight, but when applied to load lots it was and is impossible for the purchaser to determine the weight of the load. The purpose of the ordinance was most commendable and essential to secure to the purchaser the weight of the commodity purchased and paid for, * * *."

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In the case at bar it said (*City of Chicago* v. *Waters*, 363 Ill. 125, 131, 1 N. E. (2d) 396):

> "The opportunity to defraud the consumer in the sale of coal in load lots is great and the consumer has no adequate way to protect himself against being cheated."

The ordinance affects alike all those who deliver coal and other commodities in load lots in the City of Chicago whether they be residents or nonresidents of the city. No good reason is seen why nonresidents of the city should be exempted from its provisions when residents are required to conform to them. By enforcing the ordinance against nonresident as well as resident dealers of coal it cannot, we submit, be held to deny to a nonresident the equal protection of the laws guaranteed by the Fourteenth Amendment. If appellant were relieved of its requirements, then the ordinance might be subject to successful attack by local truckers on the ground of unlawful discrimination.

It is also to be noted that the record shows that, although appellant is a nonresident of Chicago and was hauling coal from Morris, Illinois, he was delivering it for one Burgess, a Chicago coal dealer doing business in Chicago as Northern Coal Co. (Abst. 20, 25.) There cannot be any doubt that the ordinance is applicable to Chicago coal dealers, and as applied to them that it is not violative of the Fourteenth Amendment.

The Fourteenth Amendment does not interfere with the police power of the States to protect the general welfare of

the public. Ordinances which regulate the methods of weighing coal and other bulky articles sold and delivered in load lots within the boundaries of the municipality are strictly within the police power, and are common in all cities and towns.

Gundling v. *City of Chicago,* 177 U. S. 183, 188.
Merchants Exchange v. *Missouri,* 248 U. S. 365, 368.
McQuillin's Municipal Ordinances, Section 485.

Notwithstanding the provisions of the Fourteenth Amendment, the States and their municipalities are left with a wide range of legislative discretion in promoting the general welfare, and the wisdom of the legislative body in the case at bar should not be disturbed.

The statement made in appellant's statement of jurisdictional facts to the effect that the destruction of a lawful and legitimate business will follow the sustaining of the ordinance is nothing short of absurd. The business of appellant and those similarly situated, who occasionally employ their general merchandise trucks, when not engaged in farming or some other occupation, in hauling load lots of coal from Morris, Illinois for delivery to Chicago customers of a Chicago coal dealer, will merely have to conform to the requirements regarding certified weights that local truckers and dealers are obliged to meet, this for the quite essential purpose of securing to the purchasing public honest weights. Whether the enforcement of the ordinance injuriously affects the business of the Morris strip mine is not directly involved in this case. Even were it involved, it is not seen how that company would be entitled to enjoy the business of selling coal in load lots to Chicago inhabitants except under the regulations applicable to all dealers of load lots, which regulations are designed to protect the purchasers against fraudulent weights.

Even lawful and legitimate business is required to submit to regulation under the police power of the States which is necessary to protect the general welfare of the public. Certainly it is necessary to secure to the public protection against short weights when buying load lots of coal. Protective measures are found in the laws of most of the States and in the ordinances of large cities.

The coal user in Chicago needs protection in the matter of dishonest weights when he buys from established coal dealers in Chicago who are directly under the supervision of the city's Weights and Measures Department. To a greater degree the user needs protection when coal is delivered to him by irresponsible, itinerant, part-time truckers using a miscellaneous lot of vehicles instead of regular coal trucks, from a mine 62 miles from Chicago. If the ordinance were not enforceable, then the conditions prevailing prior to 1924, when it was enacted, would recur and practices of fraud, short weighing and chicanery again prevail. Then the retail coal industry of Chicago would be demoralized by unfair and unethical competition and the public would be victimized by substitutions, short weights and all the other nefarious practices used prior to 1924.

The ordinance can be complied with by any legitimate and honest dealer or trucker. The cost of weighing a truck load of coal and procuring a public weighmaster's certificate of weight is but 25 cents. (Section 3621, Abst. 52.)

Appellant's statement that the coal hauled by appellant was weighed at the mine 62 miles from Chicago "in accordance with State laws and over State-inspected scales" is misleading and calculated to deceive the court. The certificate on the shipping ticket (Abst. 14, 15) is a fraud upon the customer. To weigh coal on a State-inspected scale means nothing when no certificate of weight, issued by a responsible authority, is furnished the customer.

Furthermore, on the long haul to Chicago, perhaps a night haul, a portion of the load may be lost, some of it may be bartered for gasoline en route, and there is no assurance that the customer would receive the quantity weighed at the mine.

Appellant's statement that an unequal burden is placed upon the nonresident coal dealer, even if material and in issue in the case at bar, is not convincing. Chicago coal dealers who receive coal at their city yards by steamer, railroad car or motor truck are required to handle the coal. They get no advantage over the nonresident dealer by reason of the ordinance.

Appellant relies in his statement of jurisdictional facts to a considerable extent upon the dissenting opinion filed in the instant case, though the question of the constitutionality of the ordinance is mentioned nowhere in that dissenting opinion.

An examination of the ordinance and the record in this case will, we feel confident, convince this Court that the views expressed in the dissenting opinion are unsound. There is, we submit, not the slightest evidence in the record nor the slightest suspicion to be gleaned from the ordinance itself that it is "designed for the purpose of conferring a monopoly in the coal business upon dealers residing within the City of Chicago, to the exclusion of other citizens residing outside of that city."

The dissenting justices say (p. 135):

> "This is apparent from the requirement that the empty wagon or truck must be weighed before the load is delivered to the purchaser. We cannot perceive any reason why the purchaser could not as well be protected by weighing the empty wagon or truck after delivery. This would permit hauling the load across public scales to obtain the gross weight, the unloading

> of the commodity, followed by weighing the empty wagon or truck to obtain the tare weight, and the subtraction of the tare from the gross to obtain the net."

It should be noted in connection with appellee's ordinance that the specific provision with reference to a public weighmaster certification as to the tare weight reads as follows (Abst. 53):

> "In no case shall any public weighmaster state in his certificate the tare weight of any vehicle until after he shall have weighed the vehicle in such manner as to secure the weight as specified herein; * * *."

This leaves the manner and time of ascertaining the tare weight to the public weighmaster and the provision is by no means so drastic as appellant's counsel or the dissenting justices state. Of course to give value to the weight certificate it must contain the true net weight, and in order to be able to state the net weight it is incumbent upon the public weighmaster to ascertain the gross and tare weights.

Furthermore in this connection it seems not improper to state that there is nothing in appellee's weight ordinance which would prevent a downstate coal company from establishing an agent in Chicago who might qualify and be bonded as a public weighmaster and who might weigh upon his public weighmaster scales any coal originating from the downstate company.

As stated in the majority opinion of the Supreme Court of Illinois, the object of the ordinance is not to benefit or inconvenience coal dealers but to give the buyer of the coal honest weight. When the object of the ordinance is to protect a large number of purchasers of coal in a great city from being cheated by short weights and when the business of selling coal is carried on in the manner disclosed in the record in this case, with a Chicago concern (Northern Coal Co., Abst. 25, and agent, Burgess, Abst. 20) selling the coal

in Chicago to Chicago users, and when the coal is hauled by a nondescript group of truckers, nonresidents of Chicago, not regularly engaged in the coal business, which the mining company claims to have no control over, but on the contrary disclaims responsibility for, it is plain to see what little protection the purchaser of coal would receive by the impractical plan suggested by the dissenting justices of weighing the vehicle after delivery of the coal. After the customer, who knows nothing of the identity or integrity of the trucker, has parted with the purchase price it would be overtasking human credulity to expect a free-lance trucker to go to a public scale, have his vehicle weighed, pay for the weighing and, finding that his estimated tare weight was too small, drive back to the customer and refund to him a portion of the price already collected. The suggestion that the purchaser could be protected by the weighing of the empty vehicle after delivery and after the purchaser had parted with his money and the nonresident, unknown and irresponsible trucker had gone is impracticable.

Furthermore the weights and measures department of the city could not control the situation if it were not able to supervise the weighing before the coal was delivered and paid for and the nonresident trucker had departed. It would have no one to hold responsible and the customer would have little or no chance to get redress.

We therefore respectfully contend that the delivery of true weights of coal to the consumer is a matter clearly related to the public welfare, that the ordinance is one strictly within the city's police power, that it promotes the public welfare, that it is not violative of the Fourteenth Amendment and that a substantial Federal question is not presented in the case at bar.

IV.

The Federal question attempted to be asserted is foreclosed by previous United States Supreme Court decisions.

The state, or a municipality of the state, under its police power has the right to prevent fraud generally in any transaction and especially in weights and measures of the commodities of life.

In *Schmidinger* v. *City of Chicago,* 226 U. S. 578, writ of error to the Supreme Court of Illinois, the validity of appellee's ordinance prescribing standard sizes of loaves of bread and prohibiting the sale of other sizes was attacked on the ground that it violated the due process of law, the freedom of contract and the equal protection clauses of the Fourteenth Amendment. In affirming the judgment of the state court the Supreme Court of the United States held that there was no absolute liberty of contract, that limitations thereon by police regulations of the state are frequently necessary in the interest of public welfare and do not violate the rights guaranteed by the Fourteenth Amendment; that states and their municipalities have the right to regulate trades and callings in the exercise of the police power without Federal interference under said clauses of the Fourteenth Amendment; and that mere inconvenience to merchants conducting a business subject to police regulation does not vitiate the exercise of the state's power.

The *Schmidinger* case is thought to be controlling upon the case at bar.

In *Heath & Milligan Mfg. Co.* v. *Worst,* 207 U. S. 338, 354, it was said:

> "Exact wisdom and nice adaptation of remedies are not required by the Fourteenth Amendment, nor the crudeness nor the impolicy nor even the injustice of state laws redressed by it."

In *House* v. *Mayes*, 219 U. S. 270, a State statute to prevent fraud in the purchase and sale of grain and other commodities was held to be a valid exercise of the police power and not unconstitutional as a deprivation of property or denial of equal protection of the law.

In *Merchants Exchange* v. *Missouri*, 248 U. S. 365, a State statute was upheld which forbade any person other than a duly authorized and bonded State weigher to issue any weight certificate for grain weighed at any public elevator. The court held it to be consistent with the due process and equal protection clauses of the Fourteenth Amendment and said (p. 368):

> "The regulation of weights and measures with a view to preventing fraud and facilitating commercial transactions is an exercise of the police power."

In *Brodnax* v. *Missouri*, 219 U. S. 285, it was held that where a State statute showed on its face that the subject regulated needed to be regulated for the protection of the public against fraudulent practices to its injury the court would not strike down a police regulation that does not clearly violate the Federal Constitution. In the opinion it was said that although the due process clause of the Fourteenth Amendment secures liberty of contract it "does not confer a liberty to disregard regulations as to the conduct of business which the State lawfully establishes for all within its jurisdiction."

Gundling v. *City of Chicago*, 177 U. S. 183, involved the validity of appellee's cigarette license ordinance which was attacked on the ground that it violated the due process and equal protection clauses of the Fourteenth Amendment. In holding that the enactment of the ordinance violated no provision of the Federal Constitution the court said (p. 188):

> "Regulations respecting the pursuit of a lawful trade or business are of very frequent occurrence in the vari-

ous cities of the country, and what such regulations shall be and to what particular trade, business or occupation they shall apply, are questions for the State to determine, and their determination comes within the proper exercise of the police power by the State, and unless the regulations are so utterly unreasonable and extravagant in their nature and purpose that the property and personal rights of the citizen are unnecessarily, and in a manner wholly arbitrary, interfered with or destroyed without due process of law, they do not extend beyond the power of the state to pass, and they form no subject for Federal interference."

Since appellant's business of delivering coal to Chicago users is clearly subject to police regulation any inconvenience the ordinance may cause him will not vitiate the exercise of the city's power.

Schmidinger v. *City of Chicago*, 226 U. S. 578.

Appellant states on page 7 of his statement of jurisdictional facts that the unavoidable effect of the ordinance is to require that coal shipped into the City of Chicago by truck direct from the mine to a Chicago consumer be unloaded inside the city limits so that the truck can first be weighed empty by a public weighmaster in order to obtain a tare weight for the purpose of making the certificate, and he argues that the business of itinerant truckers is destroyed by the necessity to unload in order to obtain the tare weight of the vehicle.

This is an extravagant statement not supported by the record. A public weighmaster must of course furnish a certificate showing the gross, tare and net weight and the consumer should be protected by a certificate showing the true net weight for which he is called upon to pay, but the ordinance does not call for any unloading or rehandling of coal. The time and method of weighing the empty vehicle is left to the public weighmaster. The weighing of the truck

empty is an incident in the transportation business appellant is engaged in and if, by reason of the fact that appellant is a nonresident of Chicago, it is less convenient for him to get his empty truck weighed before loading it, this inconvenience should not call for the striking down of a salutary regulation designed to protect the public. A nonresident coal trucker can comply with the ordinance if he is disposed to do so. That he is unwilling to do so evidences an intention not to deal fairly with the consumer or to seek an advantage over resident truckers.

There is no doubt that a state or a municipality may protect the general welfare of the public even though a lawful business is to some extent inconvenienced.

Schmidinger v. *City of Chicago*, 226 U. S. 578.

The authorities cited by appellant on page 16 of his statement bear this out. To sustain the validity and constitutionality of the ordinance it is not necesary that a coal mine or coal dealer located 62 miles from Chicago enjoy lower delivery costs than those local dealers who maintain coal yards in the city.

The argument that a mine owner located 62 miles beyond the city's limits and beyond its supervisory jurisdiction should be permitted to obtain a City of Chicago public weighmaster's license is outside the issues in the case. Furthermore, it is absurd.

The alleged inequality, the claimed unequal privilege, which appellant complains of, is not real and is not in any sense a denial to appellant of the equal protection of the laws or a deprivation of liberty and property without due process of law. It is not a discrimination against appellant. At most, it is only an inconvenience due to the fact that he hauls coal from a point 62 miles from Chicago, an incidental problem to be solved by him in the event he desires to deliver load lots of coal in the Chicago market.

Neither does the ordinance unjustly discriminate against any coal mine or mining community outside of Chicago. The rejected petition of those persons who sought to appear as *amici curiæ* was clearly improper and its inclusion in the record to be prepared for filing in the Supreme Court of the United States is likewise improper. That the ordinance affords protection to the purchaser, a pecuniary saving to him by minimizing losses which he would otherwise suffer through short weights, far transcending any advantage in securing cheap coal, is apparent.

For the reasons herein set forth it is respectfully submitted that the Supreme Court of the United States should decline to take jurisdiction of this appeal.

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